

SB Civil Writ Petition No.5298/2006

State of Rajasthan & Anr.

Vs.

Rajendra Giri & Anr.

Date of Order :: 17th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. B.S.Sandhu, for the respondent.

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By this petition for writ a challenge is given to the award dated 8.2.2005 passed by learned Labour Court, Sriganganagar in Labour Case No.8/2003. Learned Labour Court by the award impugned after adjudicating the industrial dispute referred to it by appropriate government under a notification dated 14.2.2003 held that retrenchment of respondent workman Rajendra Giri was effected in violation of provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947"), therefore, he is entitled to be reinstated in service with back wages in a tune of 50% of the total amount.

While giving challenge to the award aforesaid it is contended by counsel for the employer State that the Labour Court erred while accepting the claim made by the workman on the count that the industrial dispute was raised at a belated stage and also for the reason that the Labour Court failed to appreciate that

a notice as required under Section 25-F of the Act of 1947 with compensation was tendered to the workman before effecting retrenchment.

Per contra, in reply to the writ petition it is stated that there was no delay on part of the workman in raising the industrial dispute. In para 4 of the reply to the writ petition it is stated that by an order dated 17.11.1988 the Government of Rajasthan decided to retrench 2546 work charged employees employed during the period commencing from 1.4.1985 to 30.9.1988. Validity of the decision aforesaid was challenged by way of filing a writ petition before this Court but that came to be rejected on the ground of availability of alternative remedy. The appropriate government on raising the industrial dispute did not choose to refer it for its adjudication, therefore, various trade unions agitated the cause for making reference of the dispute. Nothing happened despite insistence, therefore, an individual dispute was raised by the petitioners and that was referred by the appropriate government to the Labour Court, Sriganganagar for its adjudication by notification dated 14.2.2003. As such, there is no delay on part of the workman. It is also contended that the finding given by the Labour Court is based on sound appreciation of evidence and that does not warrant interference of this Court under Articles 226 and 227 of the Constitution of India. A reference of certain

similar petitions for writ dismissed by this Court is also given in para 10 of the reply.

Heard counsel for the parties.

From minute examination of the facts averred in reply to the writ petition it is apparent that there is no delay on part of the workman in raising the industrial dispute. As a matter of fact at the first instance a challenge was given to the retrenchment effected by the employer by way of filing a writ petition before this Court and that writ petition came to be rejected on the ground of availability of alternative remedy. The appropriate government on raising the industrial dispute by union did not choose to refer it for its adjudication and, therefore, the workman in his individual capacity raised the dispute that was referred to the appropriate government. These facts clearly show that there is no delay on part of the workman and, therefore, the contention raised by counsel for the petitioners on the ground of delay in raising industrial dispute is having no merit. The issue with regard to violation of provisions of Section 25-F of the Act of 1947 is also thoroughly considered by the Labour Court in its award. The Labour Court after taking into consideration the entire evidence available on record gave a specific finding that the workman was in continuous employment of the employer

as defined under Section 25-B of the Act of 1947 and, therefore, his services could not be retrenched without adhering mandatory condition precedent for a valid retrenchment. The employer utterly failed to prove that in compliance of the provisions of Section 25-F of the Act of 1947 sufficient notice or compensation in lieu thereof was tendered to the workman. Such finding of fact does not require any interference of this Court under its extra ordinary jurisdiction.

In view of it, this petition for writ deserves dismissal. Accordingly the same is dismissed with no order to costs.

(GOVIND MATHUR),J.

kkm/ps.